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(Do Not Write Above This Line)

AN ORDINANCE

BY

C. T. Martin

AN ORDINANCE TO ESTABLISH A NEW CODE SECTION 8-2201 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA CREATING A CODE ENFORCEMENT BOARD AND AUTHORIZING SAID BOARD TO HOLD HEARINGS AND ASSESS FINES AGAINST VIOLATORS OF THE CODES AND ORDINANCES SPECIFIED HEREIN AND FOR OTHER PURPOSES.

FILED BY
CITY COUNCIL

AUG 07 2000

w/o objection

- ☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER
☒ PERSONAL PAPER REFER

Date Referred

5/1/00

Referred To:

CD/HR

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

☒ 2nd☐ 1st & 2nd☐ 3rd

Readings

☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

CERTIFIED

AUG 7 2000

ATLANTA CITY COUNCIL PRESIDENT

Robert A. Parker

CERTIFIED

AUG 07 2000

Paul Douglas Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

AN ORDINANCE

BY *C.T. Martin*

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**AN ORDINANCE TO ESTABLISH A NEW
CODE SECTION 8-2201 OF THE CODE OF
ORDINANCES OF THE CITY OF ATLANTA,
GEORGIA CREATING A CODE ENFORCEMENT
BOARD AND AUTHORIZING SAID BOARD TO
HOLD HEARINGS AND ASSESS FINES
AGAINST VIOLATORS OF THE CODES AND
ORDINANCES SPECIFIED HEREIN AND FOR
OTHER PURPOSES.**

The Council of the City of Atlanta, Georgia hereby ordains as follows:

Section 1. Pursuant to the authority set forth in the Official Code of Georgia, Annotated, Section 36-74-1 through 36-74-13, a new code section 8-2201 of the Code of Ordinances of the City of Atlanta is hereby created which shall provide as follows:

“Section 8-2201. (a) The City of Atlanta Code Enforcement Board (the Board) is hereby created.

(b) The Board shall have the authority to hold hearings and assess fines against violators of the codes and ordinances specified herein.

(c) As used in this ordinance, the term:

- (i) ‘Code inspector’ means any authorized agent or employee of the municipality whose duty it is to assure code compliance.
- (ii) ‘Municipal codes and ordinances’ means environmental ordinances and resolutions, state minimum standard codes provided for in O.C.G.A. § 8-2-25, ordinances and resolutions enacted pursuant to O.C.G.A. § 8-2-25, and ordinances and regulations providing for control of litter and debris, control of junked or abandoned vehicles, and control of overgrown vegetation. Notwithstanding the above, the term ‘municipal codes and ordinances’ shall not include:

(A) Those codes and ordinances requiring a permit, unless the alleged violator has failed to secure all necessary valid permits under said codes and ordinances; or

(B) Any local amendments to the state minimum standard codes provide for in O.C.G.A. § 8-2-25 that have not been adopted in conformity with the requirements of subsection (c) of O.C.G.A. § 8-2-25.

- (iii) 'Enforcement board' means a local government code enforcement board.
- (iv) 'Local governing board' means the governing authority of the municipality, however designated.
- (v) 'Local governing body attorney' means the City Attorney's office for the city of Atlanta.
- (vi) 'Violation involving the health or safety of a third party' means a violation that creates a legitimate concern for the health and safety of a third party occupant of a dwelling place or that creates an immediate and substantial danger to the environment.

(d) The Enforcement Board shall consist of seven (7) members.

- (i) Members of the Board shall be residents of the City of Atlanta. The Board members shall consist of members (see state law p. 2(b)) with property management and litter control experience.
- (ii) The initial appointment to the Board shall be as follows:
 - (A) Three (3) members appointed for a term of two years each; and
 - (B) Four members appointed for a term of four years each.
- (iii) Upon the expiration of the initial term of this subsection all terms shall be for three years.
- (iv) A member may be reappointed upon approval of the City Council.
- (v) An appointment to fill any vacancy on the Board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairperson, the Board shall declare the member's office vacant, and the City Council shall promptly fill such vacancy.
- (vi) The members shall serve in accordance with ordinances of the City of Atlanta and may be suspended and removed for cause as provided in such ordinances for removal of members of boards. The City Council may, with or without cause, refuse to reappoint any member of the Board at the expiration of his or her term of office.
- (vii) The members of the Board shall elect a chairperson, who shall be a voting member, from among the members of the Board. The presence of four or more members shall constitute a quorum of the Board. Members shall serve without compensation, but may be reimbursed for such travel, mileage and per diem expenses as may be authorized by the City Council or as otherwise provided by The Office of the City Attorney shall represent the Board and the Office of the City Solicitor shall present cases before the Board.

- (e) It shall be the duty of the code inspector to initiate enforcement proceedings pursuant to the various codes; however, no member of the Board shall have the power to initiate such enforcement proceedings.
- (f) Except as provided in subsections (g) and (h) of this Code section, if a violation of any code or ordinance is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall proceed with enforcement through the appropriate court or shall proceed with enforcement through the Board. If the code inspector proceeds through the Board, the code inspector shall notify the Board and request a hearing. The Board shall schedule a hearing, and written notice of such hearing shall be hand delivered or made as provided in _____ to said violator. At the option of the Board, notice may be additionally served by publication or posting as provided in _____. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the Board even if the violation has been corrected prior to the Board hearing, and the notice shall so state.
- (g) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the Board and request a hearing. The Board shall schedule a hearing and shall provide written notice pursuant to _____. The case may be presented to the Board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.
- (h) If the code inspector has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the Board and request a hearing.
- (i) Upon request of the code inspector, or at such other times as may be necessary, the chairperson of the Board may call a hearing of the Board; a hearing also may be called by written notice signed by a least three members of the Board. Minutes shall be kept of all hearing by the Board and all hearings and proceedings shall be open to the public. The Bureau of Neighborhood Conservation shall provide clerical and administrative personnel to assist the Board in the proper performance of its duties.
- (j) Each case before the Board shall be presented by the Board attorney or by a code inspector or other member of the administrative staff of the City.

- (k) The Board shall hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (l) At the conclusion of the hearing, the Board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this chapter. The findings and conclusions shall be by motion approved by a majority of those members present and voting, except that at least four members of the Board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the city and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order the Board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.
- (m) The Board shall have the power to:
 - (i) Adopt rules for the conduct of its hearing, which rules, shall, at a minimum ensure that each side has an equal opportunity to present evidence and argument in support of its case;
 - (ii) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the city code or ordinance. Subpoenas may be served by the sheriff, marshal or police department of the county or by the police department of the City or by any other individual authorized by code Section 24-10-23 to serve subpoenas.
 - (iii) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this Code section, with the approval of the court with jurisdiction over a criminal violator of the county or municipal code or ordinance.
 - (iv) Take testimony under oath.
 - (v) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance
- (n) The Board, upon notification by the code inspector that an order of the Board has not been complied with by the set time may order the violator to pay an administrative fine in an amount specified in this Code section.

(o)(i) An administrative fine imposed pursuant to this Code section for a violation involving the health or safety of a third party shall not exceed \$1000 per day.

(ii) An administrative fine imposed pursuant to this Code section for a violation that is not a violation involving the health or safety of a third party shall not exceed a total of \$1000.

(iii) In determining of the fine, if any, the Board shall consider the following factors:

(A) The gravity of the violation;

(B) Any actions taken by the violator to correct the violation;
and

(C) Any previous violations committed by the violator.

(iv) The Board may reduce a fine imposed pursuant to this Code section.

(p) A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs or this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the Board may request the Board Attorney to foreclose on the lien.

(q) If the violator objects to the fine imposed and submits to the jurisdiction of the criminal court with jurisdiction over the violator, the case shall be transferred to the criminal court and handled as a criminal charge.

(r) Any lien imposed under this chapter shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee that it incurs in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(s) An aggrieved party, including the City, may appeal a final administrative order of the Board to the superior court. Such an appeal shall be a hearing de novo. An appeal shall be filed within 30 days of the execution of the order to be appealed.

- (t) All notices required by this ordinance shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the City; or by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice.
- (u) In addition to providing notice as set forth in subsection (a) of this ordinance, at the option of the board, notice may also be served by publication or posting, as follows:
 - (i) Notice may be published once during each week for four consecutive weeks (four publications being sufficient) in the newspaper in which the sheriff's advertisements are printed in the county where the Board is located. Proof of publication shall be made by affidavit of a duly authorized representative of the newspaper.
 - (ii) If there is no newspaper of general circulation in the county where the Board is located, three copies of such notice shall be posted for at least 298 days in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.
 - (iii) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a) of this Code section. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a) of this Code section, together with proof of publication or posting as provided in subsection (b) of this Code section, shall be sufficient to show that the notice requirements of this Code section have been met, without regard to whether or not the alleged violator actually received such notice.
 - (iv) It is the intent of this chapter to provide an additional or supplemental means of obtaining compliance with its code. Nothing contained in this ordinance shall prohibit the city through its code inspector from enforcing its codes by any other lawful means including criminal and civil proceeding; provided, however, that the City shall not pursue a specific instance of an alleged violation of an ordinance against one violator before both a Board and a magistrate, municipal, or other court authorized to hear ordinance violations.